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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

3 THE WAVE STUDIO, LLC,

4 Plaintiff,

5 v.

13 Civ. 9239 CS

6 GENERAL HOTEL MANAGEMENT,
7 LTD., et al.,8 Defendants.
9 -----x10 White Plains, N.Y.
11 December 3, 2015
12 11:25 a.m.

13 Before:

14 HON. CATHY SEIBEL,

15 APPEARANCES
16 HIARING SMITH
17 Attorney for Plaintiff
18 VIJAY K. TOKE
19 CHIESA SHAHINIAN & GIANTOMASI
20 Attorney for Defendant General Hotel Management
21 ABIGAIL REMORE
22 HOWARD J. SCHWARTZ
23 CLAUSEN MILLER
24 Attorney for Defendant VFM, et al.,
25 MATTHEW JAMES VANDUSEN
BAXTER & SHAPIRO
Attorney for Defendant Delta
SIM R. SHAPIRO
GOLDBERG SEGALLA
Attorney for Defendant Setai
DANIEL BARRIE MOAR

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1 THE COURTROOM DEPUTY: Wave Studio v. General Hotel
2 Management.

3 THE COURT: Good morning everyone. Let's see, for
4 plaintiff, Mr. Toke.

5 MR. TOKE: Yes. Good morning, your Honor.

6 THE COURT: For defendant, Mr. Schwartz, Ms Remore and
7 Mr. Van Dusen. You can all have a seat.

8 I've got Mr. Schwartz's November 19th letter regarding
9 the motion that defendant would like to make and I have
10 Mr. Toke's November 30th letter regarding the motion plaintiff
11 would like to make, and why defendant's motion isn't going to
12 succeed in plaintiff's view.

13 Let me just ask a procedural question. You mentioned,
14 Mr. Toke, in your letter that you want to proffer an expert on
15 Singapore law. When you folks were before Judge Davison that
16 was just on fact discovery, did you talk about expert
17 discovery?

18 MR. SCHWARTZ: No, your Honor. As I understand it,
19 for purposes of this motion, we wouldn't be submitting
20 necessarily expert reports but just, not just, but from
21 defendant's perspective an affidavit from a very sophisticated
22 gentleman from Singapore for your Honor's consideration. So as
23 I understand the law and certainly this aspect of the case with
24 respect to foreign law, your Honor has the ability to make the
25 exclusive determination on foreign law and you can consider

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1 affidavits from foreign experts but they're not necessarily
2 expert reports at this time.

3 THE COURT: You're on the same page?

4 MR. TOKE: We're on the same page, your Honor.

5 THE COURT: So we don't need to set a schedule for
6 expert discovery, you're not asking to depose each other's
7 foreign law experts.

8 MR. TOKE: No, your Honor. We just raised the issue
9 in order to have that discussion and counsel discussed it and I
10 think we're in agreement that there need not be any expert
11 discovery. But I think there should be some disclosure at some
12 point. But that's it.

13 MR. SCHWARTZ: We have disclosed today who our expert
14 is going to be and plaintiff knew it because we met at his
15 office for depositions and as I understand it plaintiff does
16 not yet have an expert.

17 MR. TOKE: We don't have an expert retained yet but we
18 are speaking to experts on the topic.

19 THE COURT: I so look forward to that. Let me just
20 ask some questions raised by the letters just to see if we can
21 sharpen the issues a little bit. Obviously I'm going to need
22 briefing on these complex issues. I guess I'll start with
23 Mr. Schwartz's letter. The whole premise, as I understand it,
24 of your argument that Singapore law applies here is that the
25 most significant relationship test determines whose law

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1 applies. But isn't the plaintiff correct that that only
2 applies to unregistered works?

3 MR. SCHWARTZ: Not at all. In fact, they're quite
4 incorrect. The case that they rely -- the theory that they
5 relied on is expressly rejected by Itar in footnote 5 which I
6 have here. Plaintiff is relying on a Virginia district court
7 case which says that there was a distinction between registered
8 and unregistered, and the district court in Virginia relied on
9 the district court opinion in Itar which was overruled by the
10 Second Circuit. So here's footnote number 5 in Itar from the
11 Second Circuit. It says: To the extent that this decision
12 applies to U.S. work-for-hire doctrine simply because
13 copyrights certificates had been issued by the United States
14 Copyright Office it relied on an unpersuasive ground. Issuance
15 of the certificate is not a determination concerning
16 applicability of a work-for-hire or a resolution of any issue
17 concerning ownership, and then there's a citation. And no case
18 from the Southern District following Itar has followed that, if
19 I may say, rogue interpretation from Virginia.

20 So I would say it's absolutely clear from footnote 5
21 that their contention is incorrect. And we've also then, the
22 Second Circuit in Itar relied heavily on Patry and we followed
23 up on Patry's own discussion of Itar and it also makes no
24 mention whatsoever of this registered versus unregistered
25 distinction. So it's not correct that the Virginia case is

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1 wrong. It relied on the district court opinion which was
2 overruled and the district court did not mention footnote 5.

3 THE COURT: Mr. Toke, you don't want me to be a rogue,
4 do you?

5 MR. TOKE: In this instance being a rogue may not be a
6 bad idea. But we disagree with that interpretation of footnote
7 5. In fact, the district court in Virginia was simply
8 recognizing that the Second Circuit didn't overrule the grant
9 of summary judgment for those individuals that did have
10 certificates of copyright registration. So we believe that the
11 case we cited was actually appropriate. But in any event,
12 obviously this is an issue that needs to be litigated and is
13 certainly appropriate for the motions.

14 One thing I wanted to clarify, your Honor, with our
15 letter, and I apologize if it wasn't clear, because it wasn't
16 to opposing counsel, plaintiff is not suggesting that we must
17 file a summary judgment motion. In fact, we'd prefer if the
18 main issue of copyright ownership, whether it be be owned by
19 Wave or the hotels as GHM is now contending, could be decided
20 on one motion rather than having cross-motions. It becomes a
21 lot more cumbersome. But we simply raise the issue if that's
22 how the Court would prefer it.

23 THE COURT: I would never presume to give strategic
24 advice. But it seems if the defendants move for summary
25 judgment all I can do is grant it or deny it. If I deny it,

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1 then the only way you can win is at a trial unless you've also
2 moved. All I can say is even if I think you're right I can't
3 grant you summary judgment unless you make a motion. Obviously
4 you shouldn't make a motion unless you think you're entitled to
5 win on the undisputed facts, in which case I could grant
6 summary judgment if I agree. If you think you would win at
7 trial but wouldn't win on summary judgment you shouldn't make
8 the motion.

9 MR. TOKE: That's why we want to raise the issue. We
10 think that if GHM is filing a motion for summary judgment as to
11 copyright ownership, claiming that the hotels own the
12 copyrights to these photographs but in fact Singapore law, even
13 if Singapore law does apply, plaintiff will take the position
14 in its opposition that under Singapore law the copyright
15 ownership is waived.

16 THE COURT: I could find there are disputed facts and
17 then we'd have to have a trial. I think the most I can do on
18 the defendant's motion is find they have failed to carry their
19 burden that on the undisputed facts they're entitled to
20 judgment. Even if I believe that on the undisputed facts
21 you're entitled to judgment on that issue, I don't know if I
22 can grant summary judgment without you having filed a motion
23 but you can file -- I mean, it doesn't in my mind have to be a
24 motion that comes with an affidavit and a brief that duplicates
25 your opposition. It can be one brief that makes the same

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1 argument or that incorporates the argument. But I leave it up
2 to you.

3 MR. TOKE: Okay, your Honor, which is precisely why we
4 raised that issue in our letter because we wanted to know what
5 the Court's position on that is.

6 THE COURT: I guess my position is I don't have a
7 position; you do what you want. I also want to ask you,
8 Mr. Schwartz, to just tell me a little bit more about your
9 argument that the plaintiff can't prove that it is the rightful
10 owner of all of the allegedly infringed photographs based on
11 fatal errors in the chains of title. And I have two questions.
12 One is -- and I understand that this is an argument that only
13 need to reach if U.S. law applies, but it sounds like it
14 does -- if U.S. law applies, you're not arguing that plaintiff
15 can't prove that it's the rightful owner of all the works, just
16 some of them, is that correct?

17 MR. SCHWARTZ: That issue wouldn't as much be
18 ownership as much as the propriety of the registration which I
19 guess in a certain way is ownership. Let me give you just one
20 example of one of the issues. There's four Wave entities, just
21 hold that in the back of your mind. Over the course of time,
22 way before this litigation started, various entities -- we'll
23 start with the most simple one, sole proprietorship of the
24 individual plaintiff. She claims she owned some photographs.
25 She then assigned those photographs to another company. This

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1 is way before the litigation. So that entity had no more
2 photographs. That entity two days later then dissolved in
3 Singapore and then they filed all the proper papers for
4 whatever reason they may have, which I assume from the
5 testimony had something to do with some amnesty provisions
6 in Singapore.

7 THE COURT: But entity B now owns whatever rights
8 entity A had.

9 MR. SCHWARTZ: Just bear with me on this image. It's
10 like on Fifth Avenue with the shell games.

11 THE COURT: Those shell games haven't been out for
12 decades.

13 MR. SCHWARTZ: Showing my age.

14 THE COURT: Unfortunately, I know what you're talking
15 about.

16 MR. SCHWARTZ: The same thing happened with the second
17 company. She transferred those rights and some additional
18 rights to another company and dissolved the second company.
19 Transferred it to a third company, the same thing happened. So
20 during the first deposition I went through this at great
21 length, I believe showing that there was some pretty serious
22 flaws in the registrations. The registrations, for example, in
23 the Copyright Office were registered by companies that had been
24 extinguished and no longer in existence, registering copyrights
25 which by their own documents they didn't have. So there was a

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1 continuation of the deposition, we couldn't complete it all in
2 the first day. So the deposition on the second day was I
3 believe September 5 -- September 9th. And September 4th -- a
4 week before, on September 14th, the plaintiff signed a
5 document, I'm going to read you one paragraph from it which was
6 given to us the day before the deposition. This is really an
7 ineffective rewriting of history, something along the lines of
8 which I'm sure your Honor has never seen, I've never seen
9 anything like this. This is a *nunc pro tunc*, meaning forget
10 what history actually happened. Let just read you, for
11 example, one paragraph from this declaration of the plaintiff
12 individual, from Ms Lee. It says a purported assignment, this
13 is her own document, she's referring to a purported assignment,
14 meaning her own assignment, a purported assignment of copyright
15 from Wave S, the individual, to Wave Design PTE Ltd. was
16 entered into and made effective as of February 15, 2007. Okay.
17 On information and belief, we don't know what that means, this
18 assignment was made in error and is void *ab initio*. In other
19 words, in a document that she signed on September 4, 2015
20 during the course of this litigation and handed to me the day
21 before her continued deposition, she said forget what I really
22 did, forget the thing that I really filed in the copyright
23 registration, it's null and void, it's void *ab initio* and was
24 made in error.

25 So this is a somewhat longwinded answer to your

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1 Honor's question about what the heck happened. It depends on
2 what day you want to ask what happened. In 2007 this happened.
3 But they say in 2005 the this didn't really happen because I'm
4 changing it.

5 THE COURT: When you asked plaintiff's principal what
6 makes her think this assignment in 2007 was in error, did you
7 get an answer?

8 MR. SCHWARTZ: I got a lot of gobbledegook in my view.
9 Essentially she said that I made a mistake because I didn't
10 realize that by force of law when I dissolved the companies I
11 would have gotten all of the rights anyway, which may or may
12 not be true, but it doesn't change the fact that she
13 transferred the ownership of this company to another company,
14 which was legitimate, and you incorrectly filed your
15 registration. You can't pretend that that didn't happen and
16 try to say oh, never mind, which is exactly what she's saying.

17 So there are huge problems. And mind you, your Honor,
18 and I hate to give you a headache this morning, that's all
19 governed by Singapore law. The effect of those assignments,
20 the effect of declaring something null and void by itself
21 without explaining the reason for the mistake, that's all
22 Singaporean contract law, not U.S. law. This is a mess. And
23 it's not a mess that the defendants have created, it's a mess
24 that the plaintiff has created.

25 THE COURT: It also presents I guess some chicken and

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1 egg problems in that do I decide first the effectiveness of
2 these transfers and whether we have the right plaintiff in this
3 lawsuit, or do I come at it from the other end and figure out
4 which law applies. I don't know. Complicated.

5 MR. SCHWARTZ: I'm going to go from a regular headache
6 to an Excedrin headache because there is a question of whether
7 or not if the Copyright Office knew that the entity that was
8 claiming to be the registrant no longer existed and didn't in
9 fact own the rights to the copyright, whether the Copyright
10 Office would have accepted that. And there is specific
11 provision in the CFR for a referral, if your Honor so chooses,
12 to send that to the Copyright Office for the Copyright Office
13 to give guidance on whether or not they would have accepted
14 that as a registration. Because you know generally the
15 Copyright Office just stamps something as filed, they don't do
16 an investigation. Then, to go to a double Excedrin headache,
17 just simply regarding basic contract principles, and I'm
18 stepping ahead from the question that your Honor had originally
19 asked, but there is a contract that the plaintiff relies upon,
20 in other words the document that she sent to the hotel with a
21 copy to GHM that they're relying on as the production estimate
22 that has at the bottom the claimed reservation of rights.
23 That's a contract between Wave, Singaporean company, and the
24 individual hotels, which are entities existing under the laws
25 of Oman, Viet Nam, Indonesia, Malaysia and a whole bunch of

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1 countries only one of which is the United States from one
2 hotel. So an interpretation of those contracts is governed by
3 even different foreign law. The contracts between GHM and the
4 hotels themselves which we've produced to plaintiff and which
5 answer a question of whether or not the general manager -- the
6 question raised by the plaintiff is whether the general manager
7 of the hotel was really an employee of GHM or of the hotel
8 itself. The contracts say that the general manager is an
9 employee of the hotel. Each one of those contracts is by its
10 terms governed by the law of the location of the hotel. Again,
11 one contract is the government of Oman, one is with the
12 government of Viet Nam and numerous other contracts throughout
13 Southeast Asia frankly, with the exception of one hotel in the
14 United States at the time. I'm not minimizing those questions.
15 I'm saying that those questions exist in this case. And we
16 intend to raise those questions ultimately in one way to say
17 that this Court shouldn't even be deciding this, that these are
18 *forum non conveniens* issues, and for whatever reason the
19 plaintiff has not sued any of these hotels. It seems pretty
20 obvious they're necessary parties. They're not in this
21 litigation. Except for one hotel. I should say the except for
22 one hotel, the Miami hotel.

23 I'm only giving you a little bit of a description of
24 what's going to happen here and I'm not trying to exaggerate
25 and I'm not picking out metaphysical angels on the head of a

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1 pin. These are real, first level questions.

2 THE COURT: Okay.

3 MR. TOKE: If I might respond to some of these, your
4 Honor. I think GHM has defeated its own motion for summary
5 judgment before it's even been filled with all these factual
6 issues that they're claiming seem to exist. With regard to the
7 chain of title, Mr. Schwartz did actually get a straightforward
8 answer and not gobbledegook. What the principal of Wave
9 indicated, those purported assignments were actually prepared
10 much later inadvertently because the principal of Wave was not
11 a lawyer and was simply trying to make it clear what existed,
12 which is true. All of these companies had the same principal.
13 All the photographs were created by these various entities, all
14 owned by the same person.

15 THE COURT: What does that mean, created
16 inadvertently? Nobody creates an assignment inadvertently.

17 MR. TOKE: In the sense that it was actually created
18 in 2011, not 2007 or 2008, they were actually --

19 THE COURT: Nobody does that by mistake. What was the
20 reason for writing it in 2011 and backdating it?

21 MR. TOKE: Because it was supposed to be a *nunc pro*
22 *tunc*, now for then, but inadvertent because it was unnecessary.
23 And what plaintiff realized later, actually after the first
24 deposition was oh well, actually these assignments should not
25 have been done. They're not correct. Because the chain of

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1 title was final just as it was. And so the document that was
2 filed with the Copyright Office that was produced to the
3 defendant was meant to clarify all of that ownership chain of
4 title to make it clear and to clean up that chain of title.
5 This is a very common thing to do.

6 THE COURT: If you choose to do business in a
7 corporate form, for all the good reasons that people choose to
8 do business in a corporate form, that comes with certain
9 burdens, one of which is it doesn't matter if the owners are
10 the same, they're separate entities.

11 MR. TOKE: Correct, your Honor. Yes, of course. And
12 what this document does is it simply clarifies and cleans up
13 that chain of title. It's a very common practice within
14 copyright and other intellectual property areas to make sure
15 that if there are any inadvertent errors in the chain of title
16 because these corporate entities have the same principal they
17 can actually --

18 THE COURT: Isn't inadvertent error like the name of
19 the company was Cathy Seibel, Inc. and you spelled it S-I-E
20 instead of S-E-I? That's a mistake. What happened here sounds
21 like it was intentional, even if it was misguided. Am I
22 allowed to just ignore it?

23 MR. TOKE: Well, it's not ignoring it, your Honor.
24 There has been an actual clean-up of all of that later by the
25 principal of these companies.

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1 THE COURT: And that's allowed?

2 MR. TOKE: Absolutely. Why not? Any contract that
3 has been entered into can then be amended later. That's very
4 common practice.

5 THE COURT: Yes and no. If I make a deal with Joe
6 Smith to paint my house and Joe Smith wants to assign that
7 contract to Jane Doe, he can't do it unless I say okay. And if
8 in the meantime -- that's a bad analogy, but basically if the
9 owner sells the product and then the new owner, company A
10 doesn't have any rights in this photograph anymore and company
11 A doesn't even exist anymore yet company A registers the
12 copyright when it's owned by company D, let's just say, company
13 A and company D are allowed to say after the fact it's all
14 right, we're cool and the registration that was void when it
15 was made is then retroactively made valid? It may be that that
16 sort of thing is allowed.

17 MR. TOKE: In fact yes, because under the copyright
18 rules what Mr. Schwartz is talking about is that the incorrect
19 entity as the owner was placed on some of the copyright
20 registrations and that was simply corrected, which is again
21 commonplace in Copyright Office practice. This is a very
22 different situation where you have a contract between two
23 separate third parties. We're talking about a number of
24 companies, successive companies, that are all owned by the same
25 individual. There's some overlap in some of their operation,

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1 but generally speaking, when one ended the other one picked up.

2 THE COURT: Right. This is clearly a technicality. I
3 forget the principal's name but the photographer is the
4 principal of all these companies. So this is a technicality.
5 Sometimes technicalities matter. I guess you'll both show me
6 whether or not there is authority for fixing mistakes like
7 this.

8 MR. TOKE: Absolutely.

9 THE COURT: If we ever get to the implied license
10 issue, it sure sounds like there are going to be fact issues.

11 MR. SCHWARTZ: It seems to me we don't even need to go
12 that far. So let's say plaintiff's theory seems to be that she
13 had some agreement at some level with the hotel that the hotels
14 could use the photographs in the brochures but not on the
15 Internet. I think that seems to be her theory. That, under
16 very clear Second Circuit guidelines, is a contract action. In
17 other words, it's not something concerning the copyright and
18 therefore not under federal question jurisdiction, but it's a
19 question of the scope of the license, whether there was a
20 license, there wasn't a license, the license applied to
21 brochures, it didn't apply to brochures. That is a contract
22 issue, diversity jurisdiction, and there is no diversity
23 jurisdiction because these defendants are domiciled and
24 registered in New York. Plaintiff is a New York corporation.
25 And for contract jurisdiction, for diversity jurisdiction,

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1 there is none, so you wouldn't have to go any further than
2 that.

3 THE COURT: I have jurisdiction because it's a
4 copyright claim. Don't the others tag along?

5 MR. SCHWARTZ: No, because under her theory, they pled
6 this as a copyright case but it's not really a copyright case.
7 It's a case concerning the scope of the license or the
8 agreement that she had with the hotels. So while she may have
9 pled it as a copyright case, the law is very clear in the
10 Second Circuit that regardless of nomenclature that you put on
11 it, if it's not of and concerning really the copyright but is
12 really a scope of the license, that's a contract case.

13 THE COURT: I do have to say it's tempting to find no
14 jurisdiction or to decide that some court in Singapore should
15 decide this.

16 MR. SCHWARTZ: That's correct. And I just say I'm
17 very happy to rely on a brief which would show that the law, as
18 I see it, is pretty clear that the distinction between a claim
19 under a copyright violation as opposed to a claim that's really
20 a contract claim, in other words, here there's no doubt that
21 these entities, some entities on the plaintiff's side hired a
22 photographer to take photographs and were paid. So there's no
23 question that that occurred. The question then under their
24 theory is, did we have the right to use the photographs that
25 were paid for and that she took, the photographer, whether or

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1 not we had the right to use them in the way that we did, that
2 is to say on the Internet. So it's not a case of a person
3 unconnected to the plaintiff violating the plaintiff's rights.
4 This is a question of the scope of what plaintiff agreed the
5 defendants could do. That's a contract case.

6 THE COURT: If the contract said you can do A and B
7 and you do C, then you've infringed the copyright, but it
8 really turns on whether the contract said you could do C or
9 not.

10 MR. SCHWARTZ: It's a contract case, not a copyright
11 violation.

12 MR. TOKE: Your Honor, if I might respond briefly to
13 that. In terms of diversity jurisdiction, even if Mr. Schwartz
14 were correct, I think this actually came up before with
15 MasterCard, although the LLC is in New York, the residence or
16 its principal place, it would be based on the residence of the
17 principal of the LLC, who is, of course, in Malaysia.

18 THE COURT: I know you have to look to the domicile of
19 the principals, but do you disregard where the LLC exists?

20 MR. TOKE: Well, if we're looking to determine where
21 the LLC is actually domiciled, then yes.

22 THE COURT: I just don't remember. I know for a
23 corporation it's your principal place of business.

24 MR. SCHWARTZ: And correct me if I'm wrong because I
25 didn't know that that came up in the MasterCard case, which is

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1 shrouded in secrecy as far as I am concerned, I think the term
2 is aliens under the jurisdiction law, foreign citizens are
3 deemed citizens of every district if I'm correct, if I remember
4 that correctly.

5 THE COURT: This is all fascinating.

6 MR. TOKE: In any event, your Honor, we of course
7 disagree that this is a contract case. This is a copyright
8 case because there is rampant infringement of plaintiff's works
9 all over the Internet and there are a number of defendants
10 where we don't know where they got the photographs and GHM
11 doesn't know where they got the photographs. They may have
12 been ripped off from somewhere. It's definitely a copyright
13 case. There may be some implications which I think this Court
14 exercise its supplemental jurisdiction on, in terms of any
15 implied license with GHM. Again, with regard to GHM, GHM is
16 now claiming that the contracts entered into were not with GHM
17 but were in fact with the hotels. So GHM's implied license
18 theory isn't a contract issue because they were a manager of
19 hotels. And so it's not, it isn't a contract issue with GHM.
20 Nonetheless, again, all of these issues I think are well within
21 the Court's jurisdiction because it is and properly is a
22 copyright case.

23 THE COURT: Let's go off the record a second.

24 (Discussion off the record)

25 MR. SCHWARTZ: We have suggested for your Honor's

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1 approval that the defendant move by January 29th.

2 MR. TOKE: I thought it was February 14th, your Honor.

3 MR. SCHWARTZ: February 14th is fine for me.

4 THE COURT: February 15th is a Monday.

5 MR. SCHWARTZ: Make it the Friday before.

6 THE COURT: 2/12/16.

7 MR. SCHWARTZ: 30 days for the answering papers would
8 make it March 12th more or less.

9 THE COURT: That's a Saturday. Make it Monday the
10 14th for the opposition.

11 MR. SCHWARTZ: And then reply would be April 14th.

12 THE COURT: Two weeks for the reply. Make it April
13 1st. And if there's going to be a cross-motion then the
14 cross-motion can be made with the opposition and the reply on
15 the cross motion would be April 15th.

16 MS REMORE: For the opposition on the cross-motion?

17 THE COURT: Ideally defendants will move, plaintiff
18 will oppose and cross-move together, then you will reply on
19 your motion and oppose on their motion. If it's going to be
20 that, do you want more than two weeks?

21 MR. SCHWARTZ: Yes, please.

22 THE COURT: Why don't we make that April 14th and then
23 reply on the cross-motion April 28th. Now the question is,
24 what I'd like you to do is talk to your clients about a private
25 mediation and let them know how strongly I think this should

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1 happen, and then if that means you want to adjust the schedule
2 then send me a letter.

3 MR. SCHWARTZ: Also there are two other final
4 administrative details. We requested a larger than average --

5 THE COURT: All right. I almost never think it's
6 necessary but in this case, you want 40 pages for your opening
7 brief and 20 for your reply?

8 MR. SCHWARTZ: Yes. I believe in being very short.
9 We would try not to go to 40 pages.

10 THE COURT: You get brownie points if you don't take
11 all 40. And 20 for reply.

12 MR. SCHWARTZ: One other --

13 MR. TOKE: For opposition? 40 for moving and
14 opposition papers and 20 for reply.

15 THE COURT: Right.

16 MR. SCHWARTZ: One other thing so we're clear. If
17 we're going to the private mediation which seems like a
18 sensible idea, I hate to make a precondition, can we agree here
19 this is to discuss a global settlement?

20 MR. TOKE: Yes.

21 MS REMORE: So we need all the defendants then.

22 MR. SCHWARTZ: We can try to work that out.

23 THE COURT: It might make sense to have some
24 representative handful of them. I would leave that to the
25 mediator. Obviously GHM, it's sort of a choke point for almost

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1 all of them and could lead that discussion.

2 Let me talk to you about bundling the motion papers.

3 What I mean by bundling -- you're both nodding. You know what
4 I mean. I don't require bundling but I think it is a grand
5 idea.

6 MR. SCHWARTZ: It is a grand idea. You get one
7 package of everything.

8 THE COURT: You serve each other on the dates you set
9 but you don't file anything electronically until everything is
10 complete and it's in one package which gives me the ability, if
11 either side runs into a jam and needs extra time, to be
12 generous with you without having to worry about my six-month
13 list.

14 MR. SCHWARTZ: I always thought that judges were
15 waiting for me to file their papers and were going to read them
16 the moment I filed them.

17 THE COURT: I hope it's not a disappointment that that
18 doesn't happen. Sometimes a lawyer will fax in a letter at two
19 o'clock and call at three on o'clock: What's the answer to my
20 request? Like I was just hanging out with nothing to do.

21 Anything more we should do now?

22 MR. TOKE: Does the Court want to set a date for us to
23 complete the mediation?

24 THE COURT: Let's say this: Tell your clients that
25 they need to answer yea or nay within two weeks.

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1 MR. TOKE: Yea or nay whether we're going to do one?

2 THE COURT: Yes. I think in this case it's more to
3 get the right mediator than to get somebody who is available
4 now. I'm happy to push off the motion schedule if you can't
5 get it done in time, and if you come up with the right person
6 but they're not available in December, I think it's worth the
7 wait if you have somebody who knows this world. So I won't put
8 a date by which the mediation has to be completed. I'll
9 postpone the briefing schedule if necessary.

10 MR. TOKE: Very good, your Honor.

11 THE COURT: Thank you.

12 (Proceedings adjourned; 12:25 p.m.)

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